

Add Section 25174.12 to the Health and Safety Code to provide a bad debt deduction for hazardous waste disposal facility operators.

Source: Legal Division

Under existing law, Section 25174.1 of the Health and Safety Code imposes a fee on each person who disposes of hazardous waste in the state. In addition, this section requires that each operator of a hazardous waste facility at which hazardous wastes are disposed collect the fee from each person submitting hazardous waste for disposal and transmit the fees to the State Board of Equalization (Board).

However, Section 25174.1 does not provide any relief for the operator when the person who submitted the hazardous waste to the operator does not pay the operator's full charge for disposing of the waste. In effect, the operator is required to transmit the fees to the Board whether or not they have collected the fees from each person who has disposed of hazardous waste.

Under existing Sales and Use Tax Law, a retailer is relieved from liability for sales tax insofar as the measure of the tax is represented by accounts which have been found to be worthless and charged off for income tax purposes or, if the retailer is not required to file income tax returns, charged off in accordance with generally accepted accounting principals. Current law allows a retailer to claim a bad debt deduction for previously reported taxable sales if he or she does not receive total compensation for the retail sale transaction. If a retailer only collected a portion of the amount reported as taxable, a partial deduction may also be claimed for that portion found to be uncollectible.

Under existing Section 40023 of the Energy Resources Surcharge Law, an electric utility is relieved from liability to collect the surcharge insofar as the base upon which the surcharge is imposed is represented by accounts which have been found to be worthless and charged off in accordance with generally accepted accounting principles. These provisions recognize that the electric utility is simply the conduit through which the state most efficiently collects the surcharge which is imposed on the consumer of the electrical energy.

This proposal would extend to the Hazardous Substances Tax Law bad debt provisions similar to the provisions in the Sales and Use Tax Law and Energy Resources Surcharge Law so that a hazardous waste disposal facility operator would be relieved from liability for the disposal fee to the extent that the operator's charge for the disposal of the hazardous waste is found to be worthless and charged off for income tax purposes. This provision would clarify that the person who disposes of the waste is ultimately responsible for the fee and not the disposal facility operator. In addition, the proposal would specify that any payments received

by the facility operator would be applied ratably against the charges for the disposal fee and all other charges.

Section 25174.12 is added to the Health and Safety Code to read:

25174.12 A facility operator is relieved from liability to collect the fee due pursuant to Section 25174.1 insofar as the charge for the disposal of the tonnage of hazardous waste upon which the fee is imposed is an account which is found to be worthless and charged off for income tax purposes or, if the facility operator is not required to file income tax returns, charged off in accordance with generally accepted accounting principles. If the facility operator has previously paid the fee, he or she may, under rules and regulations prescribed by the board, take as a credit the amount of fee found to be worthless and charged off. If any such accounts are thereafter in whole or in part collected by the facility operator, the amount so collected shall be included in the first return filed after such collection and the fee paid with the return. In determining the amount to be deducted, claimed as a credit, or remitted, all payments and credits to the account of the person who submitted the hazardous waste to the facility for disposal may be applied ratably against the various charges comprising the amount that person agreed to pay the facility operator, including the fee imposed by Section 25174.1 which the facility operator is required to collect from the person submitting hazardous waste for disposal.